

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 2174 of 1985

For Approval and Signature:

Hon'ble MR.JUSTICE N.J.PANDYA

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H.D. VYAS, SENIOR ACCOUNT CLERK

Versus

DISTRICT PANCHAYAT-JUNAGADH

Appearance:

MR NALIN K THAKKER for Petitioner

Ms.Nina Panchal for Respondent No. 1, 2, 3, 4, 5, 6

CORAM : MR.JUSTICE N.J.PANDYA

Date of decision: 02/11/96

ORAL JUDGEMENT

As per the directions issued on 5-10-1996, the learned District Judge, Junagadh has sent a report about the heirs of the original petitioner Mr.H.D.Vyas, since deceased. That report is taken on record. As they have shown their willingness to pursue the matter further as heirs and legal representatives of the deceased petitioner, on the basis of the said report which is accompanied by an affidavit sworn to by widow of said Shri H.D.Vyas, they are joined as heirs and legal representative of the petitioner.

Learned Advocate Mr.N.K.Thakkar has expressed his willingness to continue on behalf of the heirs as an Advocate and he indicated that if at all legal aid is to be given to them he is willing to work for and on behalf of the Legal Aid Committee also. In the report received from the learned District Judge, there is no indication given by the heirs of the deceased petitioner requesting the Court to grant them legal aid. The question,

therefore, does not arise. However, as Mr.Thakkar has agreed to appear in the matter on behalf of the heirs, it is taken up for final hearing on the basis.

For respondent no.4 of this matter, a second appeal was filed and in that L.A. Mr.N.K.Thakkar appeared and he says that at admission stage itself, that appeal was rejected. When the said matter was brought over by way of second appeal against the judgment of the two Courts below, those very two judgments being the subject matter of this petition, the dismissal of the said second appeal filed by respondent no.4 will have direct impact upon the present petition. The impact will obviously be adverse.

Dismissal of the said second appeal has led to a situation whereby those two judgments of the Courts below have acquired finality. If the power under Article 226, as sought for in this petition, is exercised, it will have the effect of upsetting the order of this Court passed in the 2nd appeal. Obviously, this could not be done. Precisely, for this reason, when this matter was dealt with initially, it was clearly indicated that the Special C.A. be heard with 2nd appeal Stamp No.3174 of 1985. However, in course of time, that came to be separated with the aforesaid result. Obviously, therefore, had this matter been taken up along with the said second appeal, the result would have been the same.

In the circumstances, the petition is dismissed. The petitioner may pursue any other remedy under the law with regard to those judgments, but under the aforesaid circumstances, this Court will not exercise its power under Article 226 of the Constitution. Rule is discharged. Interim relief is vacated. No order as to costs.